PATENT

Attorney Docket No. A-71400/DJB/VEJ/RBE
Attorney Matter No. 461124-00038
Application No. 10/088,034

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Art Unit: 2132
Timothy Winston HIBBERD	Examiner: **Nima Khomassi**
Application No. 10/088,034	Docket No.: **A-71400/DJB/VEJ/RBE**
Filed: September 13, 2000	*Certificate of Transmission (37 C.F.R. § 1.8(a))* *I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office, Facsimile number (571) 273-8300 on September 27, 2006.*
For: **ACCESS CONTROL METHOD**	*Victor E. Johnson*
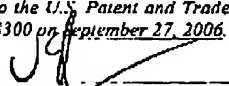
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicant request review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reasons stated below.

The undersigned is an attorney of record.

Applicant request pre-appeal review of the Examiner's rejection of claims 1-18 under 35 U.S.C. § 102(e) over U.S. Patent No. 6,418,472 to Mi et al. ("Mi").

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REMARKS

I. Clear Legal Error under § 102: Mi fails to teach each and every limitation of claims 1-18

A. Mi fails to teach applying an access rate limit

Claims 1-18 stand finally rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,418,472 to Mi et al. ("Mi"). Each and every limitation of the claim must be found in the prior art to be anticipated. *See* M.P.E.P. § 2131. Moreover, the identical invention must be shown in as complete detail as is contained in the claim. Id. Applicant respectfully submits that the Examiner has committed clear legal error by failing to indicate whether Mi discloses applying an access rate limit as called for by independent claims 1, 14, and 18.

In rejecting claims 1, 14, and 18, the Examiner suggests that Mi discloses applying the "rate limit" of the present invention and further argues that the Applicant "*does not* argue how the limitation [rate limit] ... is patentably distinct from Mi." *See* Office Action mailed June 27, 2006, p. 2 (emphasis in original). As explained in the Amendment and Reply of April 21, 2006 ("Reply"), however, the "time period" taught by Mi is not an "access rate limit" and that "the Mi patent is silent as to any rate limit or rate limiting." Nonetheless, the Examiner has continually failed to indicate whether the "rate limit" of claims 1, 14, and 18 are met by Mi.

Accordingly, claims 1, 14, and 18 have been improperly rejected under 35 U.S.C. § 102(e) and claims 1-18 are submitted to be allowable.

B. Mi fails to teach the control levels of claim 14

The Examiner has committed clear legal error by failing to indicate whether Mi discloses the control levels and invocation of such control levels as called for by claim 14. Claim 14 calls for a first, second, third, and fourth control level and invoking the control levels sequentially depending on the number of failed attempts within a set time period to verify the user.

In rejecting claim 14 over Mi, the Examiner improperly focuses on the end result--preventing hackers from gaining access--rather than the limitations explicitly called for by the

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claims. In particular, the Examiner points to the verification steps for a *single* access request as taught by Mi without indicating how these steps pertain to the multiple control levels called for by claim 14. For example, the Examiner points to step 620 of FIG. 6, which discloses the server repeating the call-back process, as teaching the third control level of claim 14. However, claim 14 calls for a third level "requiring use of predetermined download software for transmitting said access requests and verifying said user."

Because the Examiner has failed to indicate or explain whether Mi teaches each and every limitation of claim 14, the rejection of claim 14 under 35 U.S.C. § 102(e) is improper.

II. Clear Factual Error

A. The session "time limit" taught by Mi is not equal to an access "rate limit"

Claims 1, 14, and 18 stand finally rejected under 35 U.S.C. § 102(c) as being anticipated by Mi. In rejecting the claims, the Examiner states that both Mi and the present invention teach the use of a rate limit based on a "time variable" to restrict access. Applicant respectfully submits that Examiner's conclusion is a clear factual error.

M discloses a system for preventing hacker access by using a verification agent. In response to a client request for an object, the server opens a session and generates and transmits a session identifier plus the verification agent to the client. The client then executes the verification agent and calculates a hash value based on the client's processor number. If the process number is in an allowed list, the server grants the client access. *See* col. 4, lines 21-34. If the return value is not received within a "set time period," the session will "time out." *See* FIG. 3, step 350. In the verification system of Mi, a party may make an unlimited number of requests or access attempts. *See* FIG. 5, items 545, 555, and 550. Only the session time is limited.

In contrast, the present invention is directed to application of a "rate limit" whilst moving sequentially through control levels. For example, in the first control level the access rate limit of the present invention is "continuously imposed" until a user is verified or the system moves to a second control level. *See* Specification, p. 6, line 1.

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Whereas the time limit disclosed by Mi involves application of a maximum period of *time* in which the server will wait for a single response, the rate limit of the present invention involves application of a *rate* of access requests in a specified time period. The "time limit" taught by Mi prevents a hacker from having *time* to intercept the verification agent during a single session. *See* col. 4, line 59-65. It does not deny access if too many requests are given under a set period of time. In contrast, the present invention assumes a hacker can eventually gain access and prevents hackers from making unlimited attempts during a period of time.

Additionally, the variables called for by Mi and the present invention are fundamentally different. The rate limit of the present invention is a higher order variable in that it calls for a *rate of change* over time rather than simply a *time* period. *See* Specification, p. 4, lines 11-14. As understood by one in the art, a time variable is a derivative of rate. The number of requests per unit time is limited to that which a human user could make thus verifying that the client is user-controlled and not under control of a hacker. For example, in the second access control the number of verifications or requests may be limited to n requests per 24-hour period. *See* Specification, p. 7, lines 1-2. In another example, in the first control level a telephone line may be limited to a rate of "2 to 6 [server calls] per minute." *See* Specification, pg. 6, lines 25-27.

Applicant respectfully submits that the Examiner has committed a clear factual error by equating a "time limit" to a "rate limit." As previously argued and noted above, Applicant submits that Mi fails to disclose rate limiting as called for by claims 1, 14, and 18. Similarly, claims 2-13 and 15-17 are submitted to be allowable for the same reasons noted above.

B. The verification steps taught by Mi are not equal to "control levels"

Claim 14 calls for four control levels applied sequentially depending on the number of failed verification attempts. In rejecting claim 14, the Examiner refers to FIG. 3, steps 350 and 360/370, and FIG. 6, steps 620 and 640, as teaching access control levels. Applicant respectfully submits that the Examiner's conclusion is a clear factual error.

In contrast to the *single* verification test taught by Mi, claim 14 calls for applying *multiple* "hack program detection tests." Such tests are discussed on page 7 of the specification

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as originally filed. Further, claim 14 calls for a third control level requiring use of downloaded software. In contrast, step 620 referred to by the Examiner discloses repeating a call-back process. At most, this step requires downloading a Java applet to be run by the browser not an entire software application. *See* col. 9, lines 51-60.

Applicant submits that none of the steps disclosed by Mi are equivalent to nor related to the control levels called for by claim 14. Applicant submits that Claim 14 is thus allowable over the cited art, and the rejection under 35 U.S.C. § 102(e) is improper.

CONCLUSION

Applicant respectfully requests that the Panel reconsider and withdraw the rejections of claims 1-18 over Mi. If the Examiner or the Panel believe, for any reason, that personal communication will expedite prosecution of this application, the Examiner or the Panel are invited to telephone the undersigned at the number provided below.

The Commissioner is hereby authorized to charge any underpayment of the following fees associated with this communication, including any necessary fees for extension of time and for the presentation of extra claims, or credit any overpayment to Deposit Account No. 50-2319 (Order No. 461124-00038; Docket No. A-71400/DJB/VEJ/RBE).

Prompt and favorable consideration of this Request is respectfully requested.

Respectfully submitted,

Date: <u>September 27, 2006</u>   By: _____

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